IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 163 OF 2005.

Antonio Caetano Jose dos Reis
do Rosario Rocha e Melo (alias)
Caetano D'Melo -
Major, married,
r/o Calizor, Moira, Bardez, Goa. .... Petitioner.

Versus

1. State of Goa,
thro the Chief Secretary,
Panaji, Goa.

2. The Land Acquisition Officer,
Public Works Department (Cell),
Altinho, Goa.

3. The Executive Engineer,
D.W. XIII, P.W.D.
Mapusa, Goa.

4. The Collector,
North Goa District,
Panaji, Goa.

5. The Deputy Director (Public
Grievances) Directorate of Public
Grievances, Shram Shakti Bhavan,
Patto, Panaji, Goa.

6. The Secretary, (Public
Grievances) Directorate of Public
Grievances, Secretariat,
Panaji, Goa. .... Respondents.

Mrs. Asha Desai, Advocate for the Petitioner.

Shri S.R. Rivonkar, Government Advocate for the Respondents.

CORAM: R. M. LODHA &
N. A. BRITTO, JJ.

DATE: 19th SEPTEMBER, 2005.

ORAL JUDGMENT: (PER R.M. LODHA, J.)

Rule. Returnable forthwith.

2. Learned Government Advocate waives service. By consent heard forthwith.

3. On 16th August, 2005, when the matter came up before us, Mr. S.R. Rivonkar, Government Advocate stated that the acquisition of the petitioner's land for road in the year 1997 was not in accordance with the law and fresh proceedings for acquisition of the petitioner's land shall have to be taken. We, accordingly, in our Order dated 16th August, 2005 observed that the petitioner has been deprived of his land since 1997 for construction of road without following due process of law and without payment of compensation and directed the respondents to deposit a sum of Rs. 1,00,000/- with the Registry of this Court within four weeks.

4. We are informed by Mr. S.R. Rivonkar, Government Advocate that in compliance of the Order dated 16.8.05, the amount of Rs. 1,00,000/- has been deposited.

5. According to the petitioner, he has been deprived of his land admeasuring 500 sq.m. without following due process of law and if fresh acquisition takes place, the market value of his land is not less than Rs.500/- per sq.m.

6. On the other hand, Mr. S.R. Rivonkar, Government Advocate, submits that only 250 sq.m. of the petitioner's land has been used for construction of the road and that even at today's rate, the market value of the said land does not exceed Rs.300/- per sq.m.

7. In our jurisdiction under Art.226 of the Constitution of India, we do not intend to go into the disputed questions of fact regarding the exact area of the land and the market value. However, without prejudice to the rights of the petitioner and claim for compensation at the rate of market value that may be determined by the Land Acquisition Officer or the Court as the case may be, we accept the submission of the learned Government Advocate that the petitioner's land admeasuring 250 sq.m. has been acquired (though without following due process of law) for construction of road and that the market value of the said land is Rs.300/- per sq.m. As per the submission of the learned Government Advocate, the petitioner shall be entitled to compensation in the sum of Rs.75,000/-.

8. We, accordingly, dispose of the Writ Petition by the following Order :-

(i) That the petitioner agrees to the acquisition of his land comprising under Survey No.245/1 (part) at Siolim, Bardez, Goa for the construction of road.

(ii) That within four weeks from today a fresh Notification for acquisition of the petitioner's land shall be issued and published.

(iii) The Registrar of this Court shall allow the withdrawal of Rs.75,000/- to the petitioner towards compensation for the acquisition of the aforesaid land. The remaining amount of Rs.25,000/- shall be refunded to the respondents.

(iv) The Special Land Acquisition Officer shall determine the compensation in respect of the petitioner's compulsory acquisition of the land within three months from the date of the publication of the Notification under S.6 of the Land Acquisition Act.

(v) The award of the compensation by the Special Land

Acquisition Officer shall be as per the prevalent market rate on the date of publication of Notification under S.4 and not influenced by the tentative arrangement as indicated in the present Order.

(vi) The amount of Rs.75,000/- if withdrawn by the petitioner, shall be adjusted in the award of the Special Land Acquisition Officer.

(vii) It will be open to the petitioner to challenge the correctness of the compensation that may be awarded by the Special Land Acquisition Officer by seeking reference thereof.

Rule is disposed of in the aforesaid terms. No costs.

R. M. LODHA, J.

N. A. BRITTO, J.

sl.